



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

April 28, 2006

ATTN: Section 1813 ROW Study
Office of Indian Energy and Economic Development
1849 C St. NW
Mail Stop 2749-MIB
Washington D.C. 20240

Dear Mr. Francois:

The Nez Perce Tribe would like to take this opportunity to submit comments on the Energy Rights-of-Way on tribal lands study that is being conducted pursuant to Section 1813 of the Energy Policy Act of 2005. It is the understanding of the Nez Perce Tribe that the study, among other things, is charged with making findings in relation to the historic rates of compensation paid for rights-of-way, how sovereignty interests are implicated in these processes and to make recommendations for procedures to determine compensation for these grants.

Between the scoping meetings held by the Department of Interior and the Department of Energy in Denver and the work of such groups as the Affiliated Tribes of Northwest Indians (ATNI) and the Council on Energy Resource Tribes (CERT), several principals related to the questions asked by this study have been developed. The Nez Perce Tribe supports those principals as they are outlined in the document attached to this letter. These principals address the central issue in question which is the significance of tribes having the power to determine whether to grant rights-of-way for use of their lands and how such power is a cornerstone of tribal sovereignty. The principals show that changes to such power should not be made because of the severe ramifications that would result from such an undermining of a government's power.

Indian reservations are the homelands of sovereign tribal governments that were created through negotiated treaties that created the unique trust relationship that exists today between the United States and Indian Country. As such, tribal lands are different from private lands as they have a different federal legal purpose and are an important asset of a tribe's sovereignty that cannot be valued in the same ways as private lands. An inherent role of any government's

sovereignty is to exercise its own power over its land. Tribal consent on rights-of-way are a basic demonstration of this power and help to preserve tribal jurisdiction over these lands.

In addition, the ability of a tribe to have the power of consent over such transactions allows tribe's the ability to become partners in the industry which is so vital to this country. The undervaluing of such rights-of-way that has taken place in the past as well as the mismanagement of documents that show the existence of such rights-of-way by the Bureau of Indian Affairs indicate that it is appropriate today to allow tribes to negotiate on their own. This allows tribes to continue to develop as self-sufficient governing bodies which is the ultimate goal of the Indian Self-Determination policies of the United States Government. Without the power to decide such issues, the result will be a permanent or perpetual right-of-way that would deprive tribes of management and control of their lands.

The final report of this study should strongly consider the points delineated in the attached tribal principals when answering the questions posed by Congress. The implications of recommending action that is contrary to these principals would simply be an affront to the basic sovereignty of tribes across the country.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rebecca A. Miles".

Rebecca A. Miles
Chairman

April 11, 2006

**INDIAN TRIBES – PARTNERS IN AMERICA’S ENERGY FUTURE
SECTION 1813 RIGHT-OF-WAY STUDY – TRIBAL PRINCIPLES**

1. **Tribal Sovereignty and Consent.** The power of tribes to prevent third parties from using tribal lands without tribal consent is a critical element of tribal sovereignty that has been established in Federal law and policy for over 200 years. The tribal consent requirement to the use of tribal lands should be honored and preserved.
2. **Conditions to Consent.** The tribal consent requirement includes the power of tribes to place conditions on the use of tribal lands, including conditions related to tribal jurisdiction, preservation of environmental and cultural resources, duration of use, and compensation.
3. **No Negative Effects.** Adherence to the tribal consent requirement has resulted in greater energy production in Indian country and lower energy costs to consumers. The tribal consent requirement for rights-of-way has not had a noticeable negative effect on the availability or cost of energy to consumers.
4. **Preservation of Tribal Jurisdiction.** No right-of-way agreement or other business arrangement that permits third-party use of tribal land should reduce the sovereign power of a tribe over its lands or the activities conducted on its lands in the absence of the specific consent of the tribe.
5. **Restricted Duration of Rights-of-Way.** Federal law and policy should not be changed to require perpetual rights-of-way or automatic renewals of rights-of-way because such changes would deprive tribes of management and control of their lands.
6. **Negotiated Compensation.** Tribes should continue to have the right to negotiate compensation for the use of tribal land that gives tribes a fair share of the economic benefits produced by use of their lands. Such revenues sustain tribal governments and cultures.
7. **National Security.** Indian nations are an integral component of energy security of the United States, not a threat to that security. History demonstrates that tribes have permitted critical energy facilities to be used pending compensation negotiations even in cases where tribal rights-of-way have expired.
8. **Industry Partnerships – Best Practices.** Federal law and policy should provide positive incentives to tribes and industry to foster partnerships and the mutual alignment of economic interests related to energy development, transmission and distribution.
9. **Appropriate Deference.** As reflected in the Indian Tribal Energy Development and Self Determination Act of 2005, deference to tribal decision-making should remain a fundamental component of Federal Indian energy policy.
10. **Allottee Experience.** The creation of a Federal administrative valuation process for fixing tribal right-of-way compensation would be an affront to tribal sovereignty and, as shown by the disastrous Federal management of Indian allottee resources, would be a mistake.